IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Satya Narain.. Versus State of Rajasthan.

S.B. Criminal Misc. Petition No. 192/2005
against the order dated 25-1-2005 passed
by the Additional Chief Judicial Magistrate
No.3, Jodhpur, in FIR No.516/2004.

...

Date of Order: December 04, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. H.M. Sarswat, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.
Mr. B.L. Bishnoi, for the non-petitioner No.2.

BY THE COURT:

This criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the order dated 25-1-2005 passed by the Additional Chief Judicial Magistrate No.3, Jodhpur (for short, "the trial Court" hereinafter) in FIR No. 516/2004, Police Station, Maha Mandir, Jodhpur for the offences under Sections 420, 467, 468, 471 IPC.

I have heard learned counsel for the parties. Carefully gone through the order impugned.

It appears that on a reported lodged by the complainant/ non-petitioner No.2 against the petitioner for the

offences noticed above, the police registered the crime and seized a car bearing registration No. RJ-36C-0180. The non-petitioner No.2 as also the petitioner filed applications under Section 457 of the Code seeking interim custody of the vehicle in question. The trial Court, by the order impugned dated 25.1.2005, gave the interim custody of the vehicle to the non-petitioner No.2 on Supurdginama on the ground that the vehicle is registered in the name of the non-petitioner No.2 and he being the registered owner, is the person best entitled to possess the vehicle and the application filed by the present petitioner, who is said to be the financer, was dismissed on the ground that it is not a case of surrender of the vehicle by the registered owner, may be on account of default in payment of the instalments, but it is a case where the offences of cheating and forging of the documents and using them as genuine have been committed.

It is contended by the learned counsel for the petitioner that the petitioner is the financer and advanced the loan for purchase of the vehicle to the non-petitioner No.2 and though the non-petitioner No.2 paid certain instalments but failed to pay the remaining instalments and, therefore, the petitioner, being the financer, is entitled to possess the vehicle.

Learned counsel for the parties submit that in compliance of the order impugned dated 25-1-2005, the vehicle was given on interim custody to the non-petitioner No.2 and

since then the vehicle is in his possession.

The order dated 25.1.2005 was challenged by filing this petition before this Court on 10-2-2005. The matter came up before this Court on several dates and ultimately it was adjourned at the requests of the counsel.

Keeping in view the fact that the vehicle in question is the subject-matter of the offences, of which accusations are levelled against the petitioner and the non-petitioner No.2, being the registered owner and the trial Court has exercised its discretion in giving the interim custody of the vehicle to the non-petitioner No.2 almost nearly two years back, in my view, it would not be expedient in the interest of justice to dislodge the non-petitioner No.2 from the vehicle in question at such a belated stage. However, it will be open for the trial Court to decide the question of custody of the vehicle under Section 452 of the Code at the time of deciding the matter finally.

In this view of the matter, I do not find any ground to interfere with the impugned order in the inherent jurisdiction.

The criminal miscellaneous petition is, therefore, dismissed. The stay petition also stands dismissed.

(H.R. PANWAR), J.

mcs